

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CONTEMPT PETITION NO. 01 /DB/2023

*(Arising out of judgment dated 02.03.2022, passed in Claim petition No. 31/DB/2022
& judgment dated 21.11.2022, passed in Execution petition No. 25/DB/2022)*

Sandeep Kumar Chauhan, aged about 41 years, s/o Shri Satya Pal Singh Chauhan, r/o 98 Orangabad Post Office, Orangabad, District Haridwar (Retired Police Constable) C.P. 133 from Police Line, Gopeshwar, District Chamoli.

....Applicant/Petitioner

vs.

1. Dr. S.S. Sandhu, Chief Secretary, Govt. of Uttarakhand, Dehradun.
2. Shri Ashok Kumar, Director General of Police, Dehradun.
3. Ms. Shweta Chaubey, Superintendent of Police, Chamoli.
4. Shri S.S. Bisht, Director, Treasury, Chamoli.
5. Shri Romil Chaudhary, Director, Treasury, Dehradun.

.....Respondents.

Present: Sri Abhishek Chamoli, Advocate, for the Applicant/ Petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents /State. (online)

JUDGMENT

DATED: JANUARY 10, 2023

Justice U.C.Dhyani (Oral)

Present contempt petition has been filed by the petitioner for enforcing order dated 02.03.2022, passed by this Tribunal in Claim Petition

No. 31/DB/2022 and subsequent order dated 21.11.2022, passed in Execution petition No. 25/DB/2022, Sandeep Kumar Chauhan vs. State & others .

2. Considering the facts of the case, the Tribunal does not think it expedient and proper to take action against the respondents under the provision of Contempt of Court Act, 1971, as of now.

3. The contempt petition is, accordingly, converted into Execution Application, in the interest of justice.

4. Claim Petition No. 31/DB/2022, Sandeep Kumar Chauhan vs. State & others was decided by this Tribunal *vide* order dated 02.03.2022, as follows:

“Present claim petition has been filed by the petitioner, who was a Constable in Uttarakhand Police, for setting aside order dated 28.12.2021 (Annexure: A 1), order dated 27.01.2020 (Annexure: A 4) and order dated 02.07.2020 (Annexure: A 5). Petitioner also seeks to direct the respondents to pay gratuity along with 12% interest from due date till the date of actual payment. Petitioner has also sought direction to the respondents to pay the pension along with interest from the date of resignation till the date of actual payment.

2. Petitioner was serving in the Uttarakhand Police. He tendered his resignation on 05.11.2019. Before that he submitted his V.R.S. When a legal notice on behalf of petitioner was served upon respondent department, the department replied that GPF amounting to Rs. 1,31,139-00/-, Leave Encashment Rs.2,05,128-00/-, GIS Rs.20,460-00/- and LIC Rs.12,572-00/- has already been paid to the petitioner. In letter dated 28.12.2021, sent by S.P., Chamoli to Sri Ved Prakash Sharma, Advocate (for the petitioner), it was mentioned that the petitioner was below 45 years of age and had not completed 20 years of service, therefore, he was not entitled to anything else except what has already been paid to him. It has also been mentioned in the letter of S.P., Chamoli, that the petitioner first submitted his V.R.S. and thereafter he tendered resignation on 31.01.2020, which was accepted.

3. Since necessary documents required for deciding this claim petition are available on the file including the departmental version (Copy: Annexure-A 1) along with other papers, therefore, the Tribunal does not think it necessary to grant time to Ld. A.P.O., as prayed for by him, to file C.A./W.S. Ld. Counsel for the petitioner submitted that the claim petition may kindly be decided at the admission stage, inasmuch as the facts are not in dispute and it can be decided on law points only.

4. In Annexure: A 4, which is an order issued by S.P., Chamoli (Respondent No.3) on 27.01.2020, a direction was given to Pension Clerk (of S.P. Office) to release gratuity, insurance, leave encashment. Except gratuity, everything has been released in favour of the petitioner, as has been disclosed by S.P. in its letter dated 28.12.2021 (Annexure: A 1).

5. The resignation of the petitioner has been accepted by S.P. Chamoli (Respondent No.3) *vide* order dated 02.02.2020. It has been mentioned in order

dated 02.07.2020 (Annexure: A 5) that it was not possible to accept V.R.S. of the petitioner, inasmuch as he has not completed 45 years of age or has not put in 20 years of service. A reference of Rule 56 (C), Financial Hand Book, Vol. II, Part 2 to 4 has been given in such order. It has been admitted by Respondent No.3 in order dated 27.01.2020 (Annexure: A 4) that the petitioner was entitled to gratuity and, therefore, a direction was given to the Pension Clerk to release gratuity in favour of the petitioner.

6. It is, therefore, held that the petitioner is entitled to gratuity consequent upon acceptance of petitioner's resignation.

7. This Tribunal, relying upon the Govt. Order dated 10.08.2004 and hosts of other decisions, is of the view that petitioner should be paid interest on delayed payment of gratuity, admissible to him, after three months of acceptance of his resignation till the date of actual payment.

8. The respondents are, therefore, directed to release gratuity in favour of the petitioner along with interest, which shall be simple rate of interest payable on General Provident Fund, after three months of the acceptance of his resignation till the date of actual payment.

* * *

9. Petitioner has also claimed pension. Ld. A.P.O. has submitted that the petitioner is not entitled to pension, inasmuch as he had not completed 20 years of service and had not attained the age of 45 years when he tendered his resignation (and when his resignation was accepted). This was also highlighted by Respondent No.3, in its letter dated 28.12.2021(Annexure: A 1) sent to Sri Ved Prakash Sharma, Advocate, who is also representing the petitioner in this case, along with Sri Abhishek Chamoli, Advocate. In order dated 27.01.2020 (Annexure: A 4), issued by Respondent No.3, no direction was given to the Pension Clerk to release pension to the petitioner.

10. Sri Abhishek Chamoli, Ld. Counsel for the petitioner submitted that even if the petitioner had not completed 20 years of service and had not attained 45 years of age, he is entitled to proportionate pension. Ld. Counsel for the petitioner submitted that a Govt. Servant is entitled to full pension on completing 20 years of service, and is entitled to half pension on completion of 10 years of service. Petitioner is, accordingly, entitled to proportionate pension, according to Ld. Counsel for the petitioner.

11. Petitioner's application for VRS was not accepted because he had not completed 20 years of service and was below 45 years of age. The petitioner, therefore, moved resignation letter, which was accepted. Reference of Fundamental Rule 56(C), Financial Hand Book, Vol. II, Part 2 to 4 has been given in order dated 02.07.2020 of S. P., Chamoli (Copy: Annexure- A 5). In various rulings, which have been mentioned in the compilation of G.Os. (Copy: Annexure- A 6), the contents of Annexure: A-5 have been reiterated. In other words, Annexure: A-6 echoes the same law which has been highlighted by S.P., Chamoli, in its order dated 02.07.2020 (Copy: Annexure- A 5). On the contrary, Ld. Counsel for the petitioner could not place any law to show that the petitioner, not having served the respondent department for 20 years and not having attained the age of 45 years, was entitled to pension.

12. In view of the above discussion, the petitioner is not entitled to pension.

13. Claim petition thus stands disposed at the admission stage. No order as to costs.”

5. Aggrieved against Tribunal’s order dated 02.03.2022, Respondents State filed Writ Petition (S/B) No. 589 / 2022 before Hon’ble High Court of Uttarakhand. The Hon’ble Court was pleased to decide the writ petition on 17.10.2022, as follows:

“The State has preferred the present writ petition to assail the judgment dated 02.03.2022, rendered by the Uttarakhand Public Services Tribunal, at Dehradun, in Claim Petition No.31/DB/2022, preferred by the respondent-Mr. Sandeep Kumar Chauhan.

2. The limited relief granted to the claimant in the said claim petition was to issue a direction to the State to release the gratuity amount in favour of the respondent herein, along with simple interest payable on General Provident Fund after three months of the acceptance of his resignation till the date of actual payment.

3. The respondent was serving in the Uttarakhand Police. He tendered his resignation on 05.11.2019. Even before that, he had applied for V.R.S. His V.R.S. was not accepted on the ground that he has not completed 20 years of service, and has not attained the age of 45 years. So far as his claim for acceptance of V.R.S., the Tribunal did not find any merit in the same.

4. The respondent had also claimed gratuity and interest on delayed payment of gratuity. The Tribunal takes note of the fact that the S.P. Chamoli had issued an order dated 27.01.2020 directing the Pension Clerk of S.P. Office to release gratuity, insurance, leave encashment. In pursuance of the said order, all amounts, except gratuity, were released to the respondent.

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5. The submission of the learned Additional Chief Standing Counsel for the State-petitioners is that gratuity was not payable to the respondent under Regulation 418(a) of the Civil Service Regulations, as the respondent has tendered his resignation. Regulation 418(a) reads as follows:-

“418. (a) Resignation of the public service, or dismissal or removal from it for misconduct, insolvency in-efficiency not due to age, or failure to pass a prescribed examination entails forfeiture of past service.”

6. The submission is that since the respondent had tendered his resignation, it amounted to forfeiture of past service, and consequently, no gratuity was payable to the respondent.

7. We find no merit in this submission. Firstly, the order passed by the S.P. Chamoli on 27.01.2020, when relied upon by the respondent before the Tribunal, was not disowned by the petitioners, and it was not claimed that the same was contrary to the Rules and Regulations applicable to the respondent. Secondly, reading of Regulation 418(a) shows that it is only resignations which stem from misconduct, insolvency inefficiency, or failure to pass a prescribed examination, which would lead to forfeiture of past service. Resignation, as contemplated by Regulation 418(a), is penal in nature. In the present case, it is not the case of the petitioners that the resignation of the respondent was penal. It is resignation simplicitor.

8. That being the position, in our view, Regulation 418(a) is not attracted to the facts of the present case.

9. We do not find any merit in this writ petition, and the same is, hereby, dismissed.”

6. Thereafter, Execution Petition No. 25/DB/2022 was filed by the petitioner, which was decided by this Tribunal *vide* order dated 21.11.2022, as below:

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4. Ld. A.P.O., sought verbal instructions from the office of Respondent No.3. After seeking instructions from the Respondent Department, Ld. A.P.O. has stated that the admissible gratuity has been sanctioned by S.P. Chamoli (Respondent No.3) and letter has been sent to PHQ for sanction of budget and release of the gratuity, within a month.

5. The Tribunal records the aforesaid statement of Ld. A.P.O. and closes the execution application with the consent of Ld. Counsel for the parties.

6. Liberty is granted to the petitioner to make a mention, if the admissible gratuity is not released in favour of the petitioner, within reasonable time.

7. Let a copy of this order be supplied to Ld. A.P.O. for onward submission to the respondent department for necessary action.”

7. Ld. Counsel for the petitioner submitted that respondent department is not complying with the judgment and order of the Tribunal passed on 02.03.2022 in Claim Petition No. 31/DB/2022 and subsequent order dated 21.11.2022 passed in Execution Petition No. 25/DB/2022. Ld. Counsel for the petitioner further submitted that when enquiry was made from the respondent department (respondent no.3) regarding compliance of Hon’ble Tribunal’s orders, he stated that no order of Hon’ble Court has been received by them and they are unaware of such orders. It is the submission of learned counsel for the petitioner/ executioner that casual approach on the part of opposite parties/respondents should not be tolerated and strict action should be initiated against them.

8. Considering the facts of the case, this Tribunal directs the official respondent(s) concerned to comply with the order dated 02.03.2022, passed by this Tribunal in Claim Petition No. 31/DB/2022 and subsequent order dated 21.11.2022, passed in Execution petition No. 25/DB/2022, Sandeep Kumar Chauhan vs. State & others, if the same has not been complied with so far, without further loss of time, failing which the concerned respondent(s)

may be liable to face appropriate action under the relevant law governing the field.

9. Petitioner/ executioner is directed to place a copy of this order before the authority(ies) concerned by 20.01.2023, to remind that a duty is cast upon said authority(ies) to do something, which has not been done.

10. Execution application is, accordingly, disposed of at the admission stage.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 10, 2023
DEHRADUN

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