

**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 488 (S/B) OF 2021**  
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 125/NB/DB/2022]

Chandra Singh Rautela, aged about 63 years, s/o Late Sri Ram Singh Rautela, r/o Lok Vihar Colony, Rudrapur, District Udham Singh Nagar.

.....Petitioner

**vs.**

1. State of Uttarakhand through Secretary, Public Works Department, Government of Uttarakhand, Dehradun.
2. Engineer-in-Chief/Head of Department, Public Works Department, Government of Uttarakhand, Dehradun.
3. Chief Engineer, Public Works Department, Haldwani, District Nainital.
4. Superintending Engineer, 4<sup>th</sup> Circle, Public Works Department, Rudrapur, District Udham Singh Nagar.
5. Director, Lekha Evam Haqdari, 23<sup>rd</sup> Laxmi Road, Dalanwala, Dehradun.
6. Treasury Officer, Haldwani, District Nainital.

.....Respondents

Present: Sri Harendra Belwal, Advocate for the petitioner  
Sri Kishore Kumar, A.P.O. for the respondents

**JUDGMENT**

**DATED: JANUARY 09, 2023**

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

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 29.09.2022 in WPSB No. 488/2021, Chandra Singh Rautela vs. State of Uttarakhand and others, which reads as under:

“The petitioner has preferred the present writ-petition for the following reliefs:-

- “i) Issue a writ, order or direction in the nature of mandamus commanding the respondents to release the full pension along with its arrear in favour of the

petitioner on the basis of the salary entitlement of the petitioner with Grade Pay Rs. 8700/-.

ii) Issue a writ, order or direction in the nature of mandamus commanding the respondent department to release the Gratuity in favour of the petitioner including its statutory interest, as payable under section 7 (3) (A) of the payment of the Gratuity Act, 1972.

iii) Issue a writ, order or direction in the nature of mandamus commanding the respondent department to release the salary of the suspension period from 25.01.2016 to 08.03.2019, arrears of the leave encashment and other admissible retiral dues in favour of the petitioner.

iv) Issue a writ, order or direction in the nature of mandamus commanding the respondent department to release the interest for delayed of the payment in favour of the petitioner.

The petitioner is a public servant. The Uttarakhand Public Service Tribunal has the jurisdiction to deal with the issue raised in this writ-petition.

Considering the fact that the petition is pending since 2021, we direct the Registry to transfer the complete records of the case to the Tribunal, which shall be registered as a claim petition and be dealt with by the Tribunal, in accordance with law.

We request the Tribunal to endeavor to hear the petition on an early date, considering that the writ-petitioner is already a retired person.

This petition stands disposed of. ”

2. The original record of the writ petition has been transferred to this Tribunal *vide* Letter No. 14621/UHC/Service (S/B) 2022 dated 14.10.2022 of the Registrar (Judicial) of the Hon'ble High Court. The writ petition has been registered as Claim Petition No. 125/NB/DB/2022. Since the reference in this Tribunal shall be of the writ petition filed before the Hon'ble High Court, but shall be dealt with as claim petition, therefore, the claim petition shall be referred to as 'petition' and petitioner shall be referred to as 'petitioner', in the body of the judgment.

3. The petitioner, an Assistant Engineer, retired from the respondent department in July 2019. He was suspended during service., for the salary of which, along with gratuity, leave encashment etc., he filed writ petition

before the Hon'ble High Court of Uttarakhand. The writ petition was dismissed as withdrawn with liberty to file a fresh petition with better particulars. As per the petition, petitioner served the respondent department satisfactorily. He was implicated in a criminal case under the Prevention of Corruption Act, 1988. He was placed under suspension, but was subsequently reinstated on the post of Assistant Engineer Incharge in the office of Superintending Engineer, 4<sup>th</sup> Circle, PWD, district Udham Singh Nagar. After attaining the age of superannuation, the petitioner retired in July 2019.

4. It is the submission of learned Counsel for the petitioner that even after more than 3 years of his retirement, petitioner has not been given the retiral dues by the respondent department. The respondent department has released the interim pension in favour of the petitioner, but full pension and other post retiral dues have not been paid to him. No departmental inquiry is pending against him, although, a criminal case under the Prevention of Corruption Act is pending against him. The petitioner moved representation on 27.08.2021 for payment of his post retiral dues, but to no avail. Hence, the present petition.

5. Learned Counsel for the petitioner has placed reliance upon the decisions of Hon'ble Apex Court in the case of State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava and Anr, passed CIVIL APPEAL NO. 6770 OF 2013; D.S.Nakara vs. Union of India, 1983 (47) FLR 42 (SC); Secretary, Ministry of Chemicals and Fertilizers, Govt. of India vs. Cipla Ltd. and others, 2003(7) SCC 1; State of Gujrat and another vs. Shri Ambica Mills Ltd. Ahmedabad and another, 1974 (4) SCC 656 and WPSB no. 5 of 2020, Lalit Mohan Arya vs. State of Uttarakhand & others.

6. Two separate Counter Affidavits have been filed on behalf of the respondents. One C.A. has been filed on behalf of respondents no. 2, 3 & 4 and another, on behalf of respondents no. 5 & 6. It has been mentioned in the Counter Affidavit that a criminal case no. 01/1014 under section 7/15(1)D read with Section 13(2) of the Prevention of Corruption Act, 1988,

was registered against the petitioner in P.S. Sector, Dehradun. The petitioner was suspended *vide* order dated 09.02.2016 and subsistence allowance was paid to him. He was reinstated in service from the date of suspension *vide* O.M. dated 08.03.2019. It was mentioned in the letter that the decision on payment of salary for the suspension period will be taken separately. According to Counter Affidavit, no decision with regard to the salary could be taken by the department because of pending criminal case against the petitioner. Provisional pension is being paid to him. 300 days' leave encashment (of earned leave) and GIS have also been paid to the petitioner. According to para 3 of the Counter Affidavit of the respondents no. 2, 3 & 4, only salary for the suspension period, regular pension and gratuity has not been paid to the petitioner due to pendency of the criminal case.

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]*

8. A time schedule has been given in the U.P. Pension Cases (Submission, Disposal and Avoidance of Delay) Rules, 1995. Some of the relevant rules are excerpted herein below for convenience:

“4. Procedure for implementation of the time schedule and allied matters--(1) A delay may be ascertained by the Nodal Officer/Chief Nodal Officer:

(a) from the complaint of the Pensioner/ Pensioner's Organization;  
(b) from the follow up of the disposal of pension cases.

(2) Whenever any delay comes to notice of the Nodal Officer/Chief Nodal Officer, he shall require the Head of the Department/the Head of the Office to furnish all relevant informations in respect of the reason for delay and, after such inquiry as he considers proper, find out the person responsible for the delay and send a proposal to the disciplinary authority concerned for disciplinary proceeding against him, the Nodal officer/Chief Nodal Officer shall follow up the matter till the completion of the disciplinary proceeding and maintain record of such proceeding. The Nodal Officer shall intimate to the Chief Nodal Officer in respect the result of such disciplinary proceeding.

(3) A person, who fails to furnish required information to the Nodal Officer/Chief Nodal Officer in respect of retirement of an employee or in respect of any other matter relating thereto, or who is responsible for delay, shall be guilty of misconduct and be punishable under the punishment rules applicable to him.

(4) Duly completed pension papers along with all relevant document shall be sent to the pension sanctioning authority within the schedule specified I n the schedule in respect thereof.

(5) The Chief Nodal Officer/Nodal Officer and the pension sanctioning authority shall ensure arrangement for disposal of pension matters within the time schedule.

(6) The pension sanctioning authority shall hold or cause to be held regular monthly meeting of officers/officials, who deal such matter and shall take all appropriate steps for examination and disposal such matters.

(7) The Principal Secretary or Secretary, as the case may be, to be Government in the Department concerned shall supervise the work

the Head of the Department/Head of the office in relation to all pension matters within the time schedule."

**TIME SCHEDULE**

**[See Rule 3(b) and 3(k)]**

<b>Sl. no.</b>	<b>Description of work</b>	<b>Time within which work is to be done</b>	<b>Person responsible for the work</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
(1)	Completion and verification of Service Book	Month of June every year	1. Concerned clerk of concerned establishment of the department 2. Office Superintendent. 3. Head of Office.
(2)	Review of Service Book and completion of deficiency, if any	08 months before retirement	1. Concerned establishment clerk. 2. Officer Superintendent 3. Head Office.
(3)	Issue of 'No dues Certificate' (in service period)	Two months before retirement	Head of Office.
(4)	(a) Providing of pension form to retiring official (b) Filling of Pension-Form	08 months before retirement 06 months before retirement	Head of Office Retiring Government Servant
(5)	Completion of 'form in death cases'	One month after death	1. Pension clerk. 2. Office Superintendent 3. Head of Office
(6)	Enquiries from the Appointing Authority as to whether any departmental proceeding is under consideration or not	08 months before retirement	1. Office Superintendent 2. Head of Office
(7)	Supply of above information by the Appointing Authority.	07 months before retirement	Appointing Authority
(8)	Forwarding of pension papers: (a) Service Pension (b) Family Pension	Five months before retirement One month after death	Head of Office/Head of Department
(9)	Examination and scrutiny of pension papers etc., and writing to the department, if there is any objection or short coming to remove that	Two months of receipt of pension papers	1. Accountant 2. Assistant Accounts Officer 3. Pension Payment Order issuing officer
(10)	Removing of objection	One month after receiving the objection	Departmental Head of Office
(11)	Re-examination/disposal of pension case.	One month after receiving the corrected papers	1. Accountant 2. Assistant Accounts Officers 3. Pension Payment

			Order issuing officer
(12)	Forwarding of No-dues Certificate on Form-2 for release of withheld gratuity	Two months after retirement	Head of Office
(13)	Issue of Payment Order (Pension/Gratuity/Commutation of pension)	Upto or on the eve of retirement	1. Accountant 2. Assistant Accounts Officer 3. Pension Payment Order issuing officer
(14)	Sanction of Provisional Pension (if finalization is not possible)	One month after retirement/death	1. Pension clerk 2. Office Superintendent 3. Head of Office
(15)	Payment of Provisional Pension	By seventh day of every month	Drawing and Disbursing Officer
(16)	Payment of Pension	One month from the date of receipt of payment order	Treasury Officer/Drawing and Disbursing Officer
(17)	Departmental proceeding against retired employee	As per procedure laid down in CSR Article 351-A and decision to be taken within three months after receipt of Government order. If departmental proceeding has been instituted before retirement, it must be completed within six months after retirement	Administrative Department of the Government/Appointing Authority
(18)	Contest of the legal suits filed in connection with pension matters.	Counter Affidavit should be submitted as per order of the Court or within two months from the date of receipt of writ	Defendant of the department concerned.
.....	.....	.....	.....

The petitioner is, therefore, entitled to regular pension, gratuity along with interest on delayed payment of such retiral benefits.

9. Learned A.P.O., in his own wisdom, expressed anxiety, as to wherefrom the loss caused to the Govt., if any, shall be deducted, if gratuity and full pension are released in favour of the petitioner. In reply, learned Counsel for the petitioner submitted that post retiral departmental proceedings are permissible only under Article 351-A, Civil Service Regulations. In criminal prosecution, retiral dues cannot be withheld, in the absence of Statutory Rules.

10. The judgment dated 29.07.2020 of Hon'ble High Court, passed in Writ Petition (S/B) No. 05 of 2020, Lalit Mohan Arya vs. State of Uttarakhand

& others, is also pertinent in this context. The relevant paras of the judgment read as below:

*“5. The admitted fact is that pursuant to the aforesaid FIR, the department did not even give any sanction to prosecute the petitioner. Now, the petitioner stood retired after attaining the age of compulsory retirement. It is also undisputed that pursuant to the said FIR, petitioner has been granted all other service benefits. But, he has been denied his retiral dues. Though the liability has been admitted by the learned counsel for the respondents, but denial is only on the ground that criminal proceedings are pending against the petitioner.*

*6. Hon’ble Apex Court has observed in a catena of cases that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that pension is a social welfare measure rendering socioeconomic justice to those who in the hay-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch.*

*7. Even otherwise, an employee earns pension by the dint of long and continuous service and the same cannot be denied without the authority of law and without following the due process of law. Right to receive pension has been held to be the right to property protected under Article 300A of the Constitution even after the repeal of Article 31(1) by the 42nd constitutional amendment [State of West Bengal vs. Haresh C. Banarjee and others; (2006) 7 SCC 65].*

*8. In the present case, the petitioner has taken a specific plea that there is no statutory rule or provision to withhold the pension. The same has not been specifically denied by the respondents nor any such statutory rule or provision has been brought to our notice.*

*9. In fine, both on facts and in law, the petitioner is entitled to retiral dues like pension, gratuity etc. and accordingly, we allow the writ petition and direct the respondents to work out and release all the retiral dues of the petitioner within a period of three months from the date of production of certified copy of this order.”*

*[Emphasis supplied]*

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

12. Section 7 of the Payment of Gratuity Act, 1972, reads as under:

**7. Determination of the amount of Gratuity.**- (1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (i) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3) the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the Controlling Authority for the delayed payment on this ground.

13. 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]

14. The petition is disposed of by directing the respondent department 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.

15. So far as the salary of suspension period is concerned, it will be pertinent to reproduce Para 54-B, Financial Handbook, Vol. 2 to 4, as below:

“54-B (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

16. The respondent department is accordingly, directed to take a decision on the salary/ allowances, other than subsistence allowance, of the petitioner without unreasonable delay.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

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

*DATED: JANUARY 09, 2023*  
*DEHRADUN.*  
*KNP*